



Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D.C. 20554

CGB

OCT 19 2004

Control No. 0403135/kah-Pol

The Honorable Thomas A. Daschle
United States Senator
320 N. Main Avenue, Suite B
Sioux Falls, SD 57104

RECEIVED

OCT 29 2004

Federal Communications Commission
Office of the Secretary

02-278

Dear Senator Daschle:

Thank you for your letter on behalf of your constituent, Mr. Lyle Benson, who has questions regarding the Federal Communications Commission's (Commission) rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). As a loan consultant, Mr. Benson explains that he wants to send facsimile messages to establish business relationships and to notify consumers about his services. Specifically, Mr. Benson asks whether communications regarding his financial services are permitted under the TCPA and Commission's rules.

The TCPA provides that, "[n]o person may use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine." The TCPA applies only to those facsimile messages that constitute "unsolicited advertisements," which means "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission." In July of 2003, the Commission amended the facsimile advertising rules so that an "established business relationship" was no longer sufficient to constitute the prior express permission necessary to send an unsolicited fax advertisement. Instead, the revised rules required fax senders to obtain the recipient's permission in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the facsimile advertising rules, including the elimination of the "established business relationship" exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicated that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. In addition, legislation to amend the TCPA's fax provisions is currently pending before Congress. Thus, we further extended the effective date of the written consent requirement, until July 1, 2005. Enclosed is a copy of the Commission's recent Order, released on October 1, 2004.

No. of Copies rec'd 2
List ABCDE

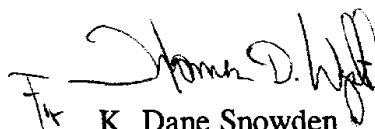
In addition, following the release of the July Report and Order, the Commission received over 60 petitions for reconsideration and/or clarification of the amended rules, the majority of which raise issues related to the rules on fax advertising and the definition of "unsolicited advertisement." These petitions are currently under review and pending before the Commission. Therefore, we have placed a copy of your correspondence in the public record for this proceeding.

Enclosed is additional information that Mr. Benson may find helpful. The Commission has available an e-mail service designed to apprise consumers about developments at the Commission, to disseminate consumer information materials prepared by the Commission to a wide audience and to invite comments from other parties on Commission regulatory proposals. This free service enables consumers to subscribe and receive FCC fact sheets, consumer brochures and alerts, and public notices, among other consumer information. To subscribe, an individual would send an e-mail to subscribe@info.fcc.gov and in either the subject line or body of the message insert: "subscribe fcc-consumer-info first name last name" (e.g., "subscribe fcc-consumer-info John Doe").

Information on all telecommunications-related issues can be accessed via the Internet from the Commission's Home Page located at <http://www.fcc.gov> and the Consumer & Governmental Affairs Bureau's web site link at <http://www.fcc.gov/cgb> or by calling 1-888-CALL-FCC. TTY users may call 1-888-TELL-FCC.

We appreciate your inquiry. Please do not hesitate to contact us if you have further questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "K. Dane Snowden".

K. Dane Snowden
Chief
Consumer & Governmental Affairs Bureau

Enclosures



TOM DASCHLE

U.S. Senator for South Dakota

CGP other
info 3/35

320 North Main, Suite B
Sioux Falls, SD 57104
605-334-9596

320 S. First Street, Suite 101
Aberdeen, SD 57401
605-225-8823

816 6th Street
Rapid City, SD 57701
605-348-7551

Washington, DC 20510
202-224-2321
1-800-424-9094

TELECOPY COVER SHEET

DATE: September 29, 2004

TO: Diane Atkinson, Congressional Liaison Specialist
Federal Communications Commission

FAX NO: (202) 418-2806

FROM: **Stephanie Devitt**
Office of Senator Tom Daschle
320 N. Main Ave., Suite B
Sioux Falls, SD 57104
(605) 334-9596
(605) 334-2591 (fax)
E-mail: stephanie_devitt@daschle.senate.gov

PAGES TO FOLLOW: 8

MESSAGE: Please note the attached correspondence from Senator Daschle. Thank you in advance for your attention to this matter.

THOMAS DASCHLE
SOUTH DAKOTA

COMMITTEES:
AGRICULTURE
FINANCE

RULES AND ADMINISTRATION

(202) 224-2321
TOLL FREE 1-800-424-9094

<http://daschle.senate.gov>

United States Senate

WASHINGTON, DC 20510-4103

320 SOUTH FIRST STREET, SUITE 101
ABERDEEN, SD 57402
(605) 225-8823

1313 WEST MAIN STREET
RAPID CITY, SD 57702
(605) 348-7551

320 NORTH MAIN AVENUE, SUITE B
SIOUX FALLS, SD 57101
(605) 334-8598
TDD (605) 334-4832

September 29, 2004

Diane Atkinson
Congressional Liaison Specialist
Federal Communications Commission
445 Twelfth Street, SW, Room 8-C453
Washington, DC 20554

Dear Ms. Atkinson:

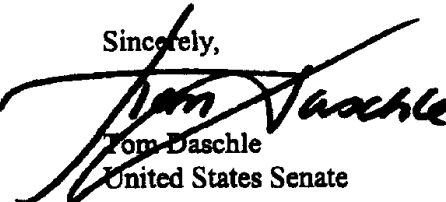
I recently have been contacted by Lyle Benson of Sioux Falls, South Dakota regarding a matter involving Federal Communications Commission (FCC). I have enclosed a copy of that correspondence for your review.

As you will note, Mr. Benson has submitted several inquiries to the FCC, and has become frustrated by the agency's lack of response. I have assured Mr. Benson that I would seek whatever assistance you are able to provide that may facilitate a strengthened understanding of this matter.

As a result of updated mail security procedures implemented in the wake of the 2001 discovery of anthrax in my office, mail to all my Senate offices is routed through Washington, DC, and delivery can take several weeks. Accordingly, so that I may respond to my constituent's inquiries with the timeliness they deserve, please fax your response or any other correspondence regarding this matter to my Sioux Falls office at (605) 334-2591. Thank you in advance for taking this matter into consideration.

With best wishes, I am

Sincerely,



Tom Daschle
United States Senate

TAD/ssd
Enclosure

Sep 15 04 04:28p

Lyle Benson

(605) 338-4759

p. 1

Lyle B. Benson, Loan Consultant
2300 S. Blauvelt Ave.
Sioux Falls, SD 57105
Phone: 605-338-9566
Fax: 605-338-4759
Website: www.bizloanapps.com
Email: Lyle@bizloanapps.com

Fax

To: Tom Daschle

From: Lyle B Benson

Fax 202 224 6603

Date 9 15 04

Phone 334 9566

Pages 7

Comments: I would like to ask if you could find out why I am not getting responses to my inquiry from the FF. Here is the correspondence that has been sent

09/15/2004 04:51PM

RECEIVED TIME SEP. 29. 1:42PM

PRINT TIME SEP. 29. 1:52PM

Sep 15 04 04:29p

Lyle Benson

(605) 338-4759

p.2

Lyle Benson, Loan Consultant

From: Lyle Benson, Loan Consultant (lylebenson@slc.midco.net)
Sent: Tuesday, September 07, 2004 9:07 AM
To: Michael.Powell@fcc.gov; Kathleen.Abernathy@fcc.gov; Michael.Coppa@fcc.gov;
KJWEB@fcc.gov; Jonathan.Adelsstein@fcc.gov
Subject: Sending faxes with notice to cancel if they are not wanted

Distinguished Commissioners: I am contacting all the commissioners via E-mail, because I have not received any response to my faxes that were sent on July 28, August 24 and August 25, 2004. I have talked by phone to Diane Tato, and two other agents and they felt my faxes were ok, but the South Dakota States Attorney have taken a strict interpretation of the rule and regulations and I have contacted an attorney and he felt the last fax sample I wanted to send out was fine as did another one of your agents. However, I need some written response from you that tells me that the SD States Attorney cannot take me to court and cause undo attorney fees to defend the right of freedom of speech. I am currently receiving faxes from people that indicate that they will stop sending faxes if the people receiving them don't want them sent. I believe I should have received a response by this time.

09/15/2004 04:51PM

RECEIVED TIME SEP. 29. 1:42PM

PRINT TIME SEP. 29. 1:52PM

Sep 15 04 04:29p

Lyle Benson

(605) 338-4759

p.3

Lyle B. Benson, Loan Consultant
2300 S. Blauvelt Ave.
Sioux Falls, SD 57105
Phone: 605-338-9566
Fax: 605-338-4759
Website: www.bizloanapps.com
Email: Lyle@bizloanapps.com

Fax

To: Diane Tato @ Federal Communication Commission

From: Lyle B Benson

Fax 1 866 418 0232

Date 8 25 04

Phone 1 888 225 5322

Pages 2

Comments: I contacted you on 8 24 04 and asked if your manager would respond to my question and here is an example of the letter I would use to find out if I have a clientele and I do not consider this a solicitation. Please respond in writing. Thank you

09/15/2004 04:51PM

RECEIVED TIME SEP. 29. 1:42PM

PRINT TIME SEP. 29. 1:52PM

Sep 15 04 04:30p

Lyle Benson

(605) 338-4759

p. 6

Federal Communications Commission
Consumer & Governmental Affairs Bureau
445 12th Street, S.W.
Washington, D.C. 20054

July 28, 2004

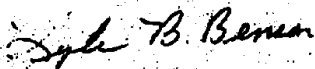
Gentlemen:

I have contacted you in the past and you have faxed me the rules and regulations regarding sending faxes that may or may not be wanted. I have attempted to market my services via newspapers, weekly and monthly-published Newspaper Journals and newspaper advertisements without success. My firm is small consisting of myself and my son, who is going to college and I am trying to help him financially. I need to contact my clients and educate them as I have in the past, as this is the only way I can succeed financially. Other methods of marketing are financially unworkable. Consequently, I am sending you a letter that I want to send out to establish a business relationship that will allow me to continue sending faxes that are both educational and tells them of my services.

I would like you to approve this action so I do not have trouble with the SD States Attorney Office. I am enclosing a typical letter that both educates and states who I am.

Please fax me back your response and thank you for consideration.

Sincerely,



Lyle B Benson, Loan Consultant
2300 S. Blauvelt Ave,
Sioux Falls, SD 57105

09/15/2004 04:51PM

RECEIVED TIME SEP. 29. 1:42PM

PRINT TIME SEP. 29. 1:52PM

Sep 15 04 04:30p

Lyle Benson

(605) 338-4759

p. 7

Lyle B. Benson, Loan Consultant
2300 S. Blauvelt Ave. Sioux Falls, SD 57105
Ph 605 338 9566 Fax 605 338 4759
E Mail Lyle@bizloansppa.com

Dear Business Owners:

For approximately six years I have been sending faxes out to business owners that may need a business loan for a significant amount. I attempted to educate the people I contacted with this faxed letter, because probably less than one percent of the people knew what I really had to offer in services. Consequently, I sent different letters educating the business owners as to what they should be doing to get a loan and good terms for the loan they needed.

Less than a one-quarter of one percent of the people I contacted asked me to delete their fax number from my database.

For me to continue to send fax letters out to business owners, I need your permission and approval.

If you would check at the bottom of this page Yes for further faxes to be sent or No and fax this letter back to me, I will act accordingly in the future.

Thank you for your assistance and consideration.

Sincerely,

Lyle B Benson, Loan Consultant

Yes or No

09/15/2004 04:51PM

RECEIVED TIME SEP. 29. 1:42PM

PRINT TIME SEP. 29. 1:51PM

Sep 15 04 04:29p

Lyle Benson

(605) 338-4759

p. 4

Lyle B. Benson, Loan Consultant
2300 S. Blauvelt Ave.
Sioux Falls, SD 57105
Phone: 605-338-9566
Fax: 605-338-4759
Website: www.bizloanapps.com
Email: Lyle@bizloanapps.com

Fax

To: Federal Communication Commission

From: Lyle B Benson

Fax 1 866 418 0232

Date 8 24 04

Phone 1 888 225 5322

Pages 4

Comments: I have previously sent you a fax requesting assistance in sending out faxes to business people that I have been contacting for approximately seven years. Only about a quarter of one percent ever respond and ask me to remove their fax number from my list. I am assuming that the other 993/4% have accepted and approved of my faxes and are simply waiting for an appropriate time to utilize my services. I am assuming I have established a business clientele and I can send other faxes.

I am enclosing previous fax transmission to you and would like a response.

09/15/2004 04:51PM

RECEIVED TIME SEP. 29. 1:42PM

PRINT TIME SEP. 29. 1:52PM

Sep 15 04 04:29p

Lyle Benson

(605) 338-4759

p.5

Lyle B. Benson, Loan Consultant
 2300 S. Blauvelt Ave. Sioux Falls, SD 57106
 Ph 605 338 9588 Fax 605 338 4759
 E Mail Lyle@bizloanapps.com

Dear Business Owners:

In the past I have sent out letters indicating how you can save money in obtaining commercial loans. But it is for you to choose whether you want me to continue to promote this service by fax.

**Shall we continue to send our
great informational faxes to you?**

1	1	1	1
1	1	1	1
1	1	1	1
1	1	1	1
1	1	1	1
1	1	1	1
1	1	1	1
1	1	1	1
1	1	1	1

Please check

Fax to 1 605 338 4759

If you are interested in receiving future faxes which could save you money then let us know, if you would not like to receive any faxes from my firm we will be happy to remove you from our customer list

What Information I offer

A professional Loan Consultant can eliminate the substantial amount of time and effort it takes to work with several banks in submitting your commercial loan application. You need to make sure that an independent credit analysis is properly prepared that will assure you that all financial information is being considered and properly evaluated so that the bank will offer you the best terms that you want and need. Finding the best loan and terms is a professional process.

09/15/2004 04:51PM

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